

Online Voter Registration: Potential Impact and Implementation in Texas

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Abstract

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Thirty-eight states currently have online systems for voter registration. Despite this growing trend, Texas only offers paper registration. This thesis examines the impact online voter registration system could have in Texas. I demonstrate that such a system could improve the accuracy, affordability, and reliability of voter registration in the state. I articulate how Texas could implement an online voter registration system through state legislation or through a legal decision. I examine why Texas has not implemented online voter registration to date. I evaluate the roadblocks that have prevented the state from implementing an online system. These roadblocks include the role of partisanship in the Texas Legislature, concerns over voter fraud, and concern about the security of an online system. Despite these challenges, online voter registration has gained significant momentum in the legislative and legal arenas, which give it potential to be implemented in Texas in the future.

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Introduction

Today, nearly all aspects of American lives are tied to technology. Through the everyday conveniences of Netflix and smart phones, but also in our interactions with the government. Texans can pay taxes, renew their driver's license, sign up for health care, and even request a replacement social security card online. Despite our reliance and comfort in using the internet for each of these tasks, one fundamental task and right of citizenship has been left behind from modernization in Texas. Unlike 38 other states, Texans cannot register to vote online, and instead are required to deliver a paper copy of a voter registration form to newly register in their county.

This lack of online voter registration (OVR) in Texas means the barriers to voter registration for Texans are higher than if the state had OVR, while their election processes are less reliable and efficient. Compared to an online application, the life of a voter registration application form in Texas is very lengthy. A potential voter must acquire or print a physical registration form, put it in the mail where it has the potential to be lost, find the time to deliver it to a government office, or trust someone else to deliver it for them. After the form arrives at the county office there is a high likelihood that their information will be incorrectly entered into the digital database. This process could be improved and simplified by additionally providing an option to register online.

Texas should implement a system of online voter registration (OVR), as it would make voting more accessible, secure, and efficient in Texas. Chapter one of this thesis discusses the potential benefits of OVR in Texas. Chapter two discusses the possible avenues for OVR legislation in the Texas Legislature. Chapter three discusses legal challenges that, if successful, could require the state to implement OVR to comply with federal "motor voter" requirements.

Online voter registration systems allow voters to register entirely online. For example, a voter would fill out certain biographical information in an online form and then submit that information online. This is distinct from other systems in that no part of the process requires a physical copy of the registration form. A system in which a form is filled out online, but must then be printed out and mailed, would not be sufficient for an online system as the final portion of the process does not occur online. Although there are several possible variations in the online process, which I will discuss later, the primary requirement of OVR is that the entire process occurs online.

OVR implementation in Texas would have the greatest impact on voters who are registering for the first time in a county. In Texas, this applies first time registrants or individuals were previously registered in another county or state. This discussion of OVR implementation is less relevant to individuals who have moved within a county and need to update their voter registration to reflect this new address. While their registration could be updated in an OVR system, there are already current ways for their registration to be updated online, or in person at voting locations during elections. Currently, there is no online system for those who want to newly register to vote in a county; this is the subject of the following discussion.

Background

To vote in Texas, one must be registered in the county in which they reside. Unlike many other states, this registration process in Texas does not include an online option for those who are first time registrants in the county. Instead, a registration application must be submitted to the county registrar, usually housed in the tax or county clerk's office, in person, by mail, or by fax at least 30 days before an election. This physical application must be signed by the applicant. The application also requires certain biographical information, including a Texas driver's license

number, a Texas personal identification card number or a social security number. While the number from one of these forms of identification (ID) is required, an applicant is not required to show a physical copy of their ID at any point during this registration process. After a county's voter registrar receives an application, biographical information and ID number are used by the Secretary of State's office to verify the identity, residency, and citizenship of the applicant. Using this information, the Secretary of State verifies that the information provided is correct and that the applicant is eligible to vote. An applicant is eligible if they will be 18 years old by the time of the next election, are a citizen of the United States, are not a convicted felon, and have not been declared mentally incapacitated by the state.¹ If someone moves within a county or was previously registered within that county, they may update the address and/or biographical information on their voter registration online through the Secretary of State website. However, if it is someone is newly registering in a county, either because they were not registered anywhere or because they were registered in a different county, then there is no online option for them to register to vote.²

Recent Texas policies have made the registration process for voters more accessible than before, although limitations that still exist. Specifically, the implementation of the National Voter Registration Act (NVRA) in 1993, which includes a "motor voter" requirement, was instrumental in increasing the accessibility of voter registration across the country. This "motor voter" law requires that any time someone receives a form of identification from the Department of Public Safety (DPS) in a state, including a ID renewal or address change, this must also serve as an application for voter registration – unless, "the applicant fails to sign the voter registration

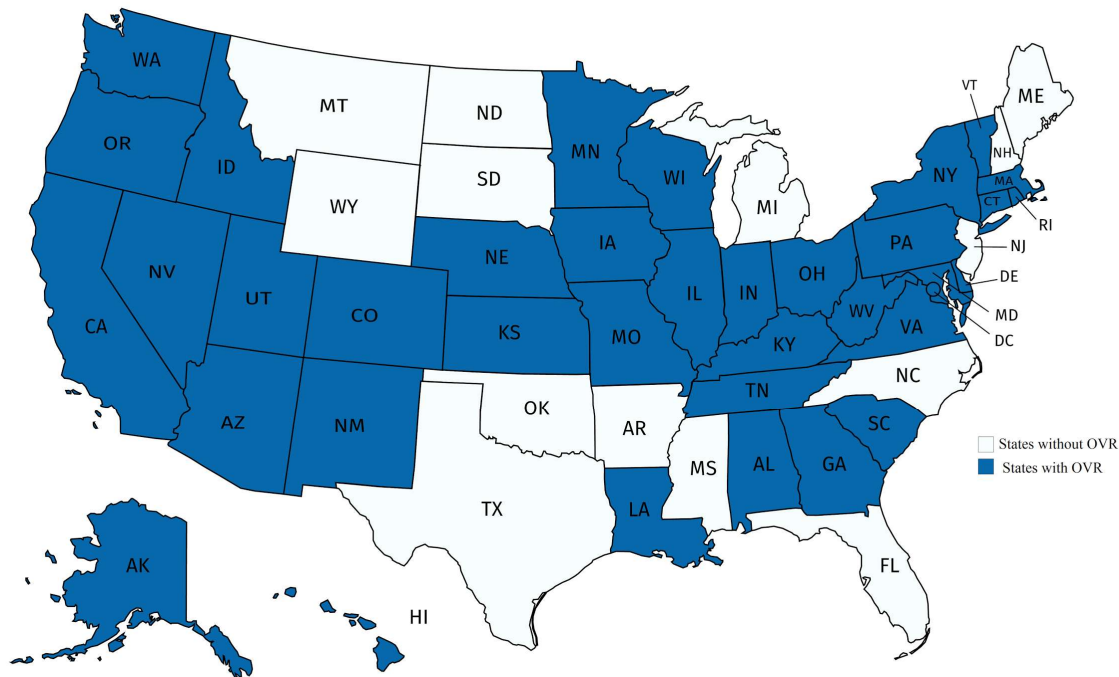
¹Texas Election Code. Title 2. Chapter 13: *Application for Registration; Initial Registration*. 1999. Web Dec. 2016.

² VoteTexas.gov » Did You Change Something? Texas Secretary of State, n.d. Web. 08 Dec. 2016

application.”³ As a result, Texans are provided with the option to register to vote when they visit the DPS for a driver’s license or other form of identification (ID). While this has greatly increased the accessibility of registering to vote in Texas, this policy is only uniformly applied when someone physically visits a DPS office. While license and ID renewals may be completed online through the Texas DPS’s website, the website does not provide an online option for first time voter registration in a county. Instead, first time registrants who visit the DPS website are redirected to another state website where an applicant may print out a voter registration form, and must then mail or deliver a physical copy of the form. The Texas Civil Rights Project filed a case in early 2016 alleging that Texas’s lack of online registration during an online ID renewal violates the NVRA. This case is discussed in detail in Chapter 3.

³ "The National Voter Registration Act Of 1993 (NVRA)." *Department of Justice*. Department of Justice, 2016. Web. 08 Dec. 2016.

⁴Figure 1: States that have Implemented and/or Enacted Online Voter Registration



Unlike Texas, 38 others States and Washington D.C. currently have OVR or are in the process of implementing a system to register to vote online, which are identified in blue in Figure 1. This online process is a similar process to registering on a physical form. An applicant enters the same information they would on a paper form, but instead completes the process entirely online; there is no need to print or mail any form. The information from the application is then compared to information already on file with the state, through driver's license and other ID records. Many states use signatures already on file in driver's license or other ID files for these online registrations. This requirement for the state to already have a signature on file for an applicant means that many states only offer online registration as an option for those who already

⁴ "Online Voter Registration." NCSL. National Conference of State Legislatures, 31 Jan. 2017. Web. 6 Apr. 2017.

have state IDs. However, some states have implemented an option to register online for those without state IDs. For example, Minnesota does not collect signatures for voter registration purposes, and instead only uses the ID numbers provided to verify applicants' identities. Alternatively, some state, like Delaware and Missouri, allow applicants to use a touch screen device to sign their voter registration application.⁵ As more states have implemented online voter registration, the variety in registration requirements has also increased. For instance, online registration for individuals who lack a state ID or signature on file with the state has become more common. In all states, paper registration is still available as an alternative to registering online⁶

Arizona was the first state to implement OVR via legislation in 2002. Since then, 38 other states and Washington D.C. have implemented online registration. Additionally, 7 other states are currently in the process of implementing an online system, either because the state passed OVR legislation or the state does not require legislation to implement OVR. Generally, OVR was created in these states via legislation; however, 5 states implemented it without legislation because state law did not need to be altered for a state agency to implement OVR. The implementation of online systems in states has especially gathered momentum over the last couple of years, with the concentration of states moving towards an online system accelerating rapidly. In the beginning of 2016 alone, seven states were in the process of creating and implementing online registration systems, either due to recently passed legislation or state agency action.⁷

⁵ "Online Voter Registration, Trends in Development and Implementation." Pew Trusts. Pew Charitable Trusts Foundation, May 2015. Web. 8 Dec. 2016.

⁶ "Online Voter Registration." National Conference of State Legislators. N.p., n.d. Web. 8 Dec. 2016.

⁷ "Online Voter Registration." National Conference of State Legislators. N.p., n.d. Web. 8 Dec. 2016

OVR Legislation in Texas

During the 2015 legislative session in Texas, Representative Celia Israel (D), Representative Carol Alvarado (D), Representative Patricia Harless (R), and Senator Carlos Uresti (D) each introduced individual bills that were the first to propose online voter registration in Texas. Each Representative filed similar, if not identical, bills proposing that an online method for registering to vote be created. All the bills filed would have required that applicants already have a signature on file with the state's DPS. Thus, these bills would only have created an online system for those with a Texas ID. Applicants without a Texas ID would instead still need to print, sign, and mail the application. Despite this limitation, these bills would have permitted first time registrants with a Texas ID to register to vote online. However, none of these bills filed during 2015 sessions were voted on by the legislature or even made it out of committee. The bills filed by Representative Harless and Representative Uresti were never even heard in committees, and House Bill 76 and House Bill 953 by Representative Israel and Representative Alvarado were left pending in the House Elections Committee after a contentious committee hearing.

This significant opposition to Representative Israel and Representative Alvarado's bills during the House Elections Committee hearing on April 27th, 2015 prevented the Chair of the committee from taking further action on the bills. Thus, the bills were never voted on by the committee members. The opposition during the committee hearing came from several Houston elected officials and community leaders. About this opposition, Representative Israel stated, "There were just too many folks out there who would rather believe a partisan official from Harris County as opposed to a nonpartisan state employee who tells you, 'We could do this.'"⁸

⁸ Svitek, Patrick. "Lawmaker: Harris County Officials Derailed Online Voter Registration Bill." *The Texas Tribune*.

Several concerns were central to the opposition during the committee hearing—fraud, logistics, and the electoral impact of OVR. One witness during the committee hearing, Ed Johnson from the Harris County Clerk’s office, claimed that OVR could be used to fraudulently register individuals by using a photo of another individual’s ID and using it to register that person.⁹ Mike Sullivan, the Tax Assessor-Collector of Harris County (and responsible for voter registration in the county) gave an impassioned testimony against both OVR bills up for discussion. He claimed that there was no need for improvement of the current voter registration system, and that online methods could create additional opportunity for fraud, as well as create more complications due to the data methods used, and questioned how much an online system would cost to use. Additionally, committee testimony alluded to the uncertainty of OVR’s impact on electoral outcomes. Alan Vera, a representative from the Harris County Republican Party, addressed the “three young Republicans” sitting on the committee and suggested that online registration could lead to them losing reelection. The issues and events from this committee hearing will be discussed in detail, and compared to discussions in other states, within Chapter 2.

Like the 2015 legislative session, the current legislative session of 2017 has demonstrated limited potential for movement on OVR. As they did in 2015, Representative Israel, Representative Alvarado, and Senator Uresti introduced filed bills this year that would have implemented OVR. Representative Harold Dutton (D) and Senator Sylvia Garcia (D) each filed bills that proposed OVR in Texas.

N.p., 02 May 2015. Web. 08 Dec. 2016.

⁹ Texas House Elections Committee Hearing. Apr. 27, 2015. Web. 08 Dec. 2016.

Chapter 1: Benefits of Online Voter Registration

To understand why Texas should implement online voter registration (OVR), it is important to consider what the substantial changes and differences would be in comparison to a paper based system. Despite the concerns skeptics have about OVR, there is a clear case for the benefits of OVR. Switching from a paper based to completely online system of voter registration in Texas would provide numerous benefits, which include:

- Increased voter registration and voter turnout
- Reduced monetary costs
- Increased accuracy of voter registration records
- Reductions in the time to process voter registration applications

Other states have experienced these benefits after implementing OVR, and they are all potential benefits to Texas from OVR. The Presidential Commission on Election Administration published a broad overview of recommendations for elections reform across the country in 2014, which acknowledged these same improvements. The report included a strong recommendation that states adopt online voter registration systems because Online Voter Registration:

- reduces the high potential for error that exists with traditional paper-based systems;
- saves jurisdictions a significant amount of money;
- increases the accuracy and currency of the voter rolls, thereby reducing delays and congestion at the polling place; and
- improves the voter experience because voters get immediate feedback when they are

registered or when their information (e.g., address, party, etc.) has been updated.”¹⁰

The following discusses each of these benefits from OVR and demonstrates the vast improvements that OVR could create for voter registration and elections in Texas.

Turnout

Online Voter Registration could contribute to higher rates of voter registration, and subsequently higher voter turnout, in Texas. During the 2016 presidential election, about 78% of eligible voters in Texas were registered to vote – or about 15 million Texans. Of those 15 million registered voters, about 60% voted in the November election. The total turnout among eligible voters, whether registered or not, was about 46%.¹¹ Compared to national rates of voter registration and turnout, Texas constantly ranks towards the bottom of all states.

In states where OVR has been implemented, online registration became immensely popular. For example, “despite being made available for only the final three months of the year, online registration accounted for nearly 31 percent of all voter registration transactions in South Carolina in 2012.” Additionally, California received nearly 1 million applicants in the first month it launched its OVR system prior to the 2012 presidential election.¹² This popularity means, especially in the long run, that OVR could become one of the most common methods for voter registration in Texas. Figure 2 highlights the percentage of registrations that occurred online in several states from 2010 to 2012. Figure 2 demonstrates the increase in OVR popularity in states over time, as Arizona has the highest use of OVR and was the first state with OVR.

¹⁰*The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration*. Rep. N.p.: Presidential Commission on Election Administration, 2014. Web.

¹¹ <https://www.sos.state.tx.us/elections/historical/70-92.shtml>

¹² *Voter Registration in a Digital Age: 2015 Update*. Rep. Brennan Center for Justice, 2015. Web. 7 Apr. 2017.

Figure 2:

**Online Registrations as Reported to the
U.S. Election Assistance Commission, Nov. 2010-Nov. 2012¹⁴⁰**

State	Total New Voter Registration Applications Received, 2010- 2012	Total New Voter Registration Applications Received Online, 2010-2012	Percentage of New Voter Registration Applications Received Online, 2010-2012
Arizona	576,085	267,538	46.4%
Utah	217,657	58,209	26.7%
Washington	697,507	128,605	18.4%
California ¹⁴¹	2,111,659	375,750	17.8%
Colorado	458,323	75,106	16.4%
Oregon	245,315	38,317	15.6%
Kansas	235,322	35,057	14.9%
Indiana	354,598	50,489	14.2%
Nevada ¹⁴²	239,755	33,224	13.9%
Louisiana	375,809	51,517	13.7%
Maryland ¹⁴³	408,588	46,513	11.4%
Delaware	71,181	5,384	7.6%
South Carolina ¹⁴⁴	255,445	11,748	4.6%

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If OVR can lead to an increase in the number of Texans that are registered to vote, it can also lead to an increase in the percentage of Texans who are heading to the polls during elections. This is supported by evidence that there is a strong relationship between voter registration requirements and turnout. The introduction of registration requirements during the twentieth century has been tied to subsequent decreases in voter turnout ranging from 3 to 10 percent in different states. On the other hand, measures that reduced registration requirements as part of the National Voter Registration Act, such as the “motor voter” policy, led to an increase in voter turnout. For instance, A 1998 study found the Colorado had a 4.7% increase in registrations after “motor voter” practices were implemented.¹⁴ Thus, the increased accessibility

¹³ *Voter Registration in a Digital Age: 2015 Update*. Rep. Brennan Center for Justice, 2015. Web. 7 Apr. 2017.

¹⁴ Baumgarten, Harry William. *Rocking the vote? A statistical analysis of the potential effect of online voter*

of registration that OVR would provide in Texas, could also lead to an increase in voter turnout in the state.

It is alternatively possible that OVR would not have a significant impact on the number of individuals registered, and minimal impact on turnout. This is most likely in the short term following OVR implementation as less people will be aware that registering online is an option. For example, two year after implementing an OVR system, California did not find that it had significantly expanded the number or demographics of individuals who were registered to vote in the state.¹⁵ However, these numbers tend to grow over time after the program has been in place for a longer time. For instance, the percentage of new online application in Arizona increased from 25% to 39% between 2003 and 2008.¹⁶

OVR particularly impacts younger voters by increasing their registration and turnout. Registrations completed online are more likely to be completed by younger voters than other age groups. In Arizona, the first state to implement OVR, a 2010 study found that applicants under the age of 40 accounted for 55 percent of registrations completed online. Similarly, in Washington, the second state to implement OVR, sixty percent of registrants were under the age of 34.¹⁷

Additionally, while younger voters have low turnout rates, the turnout rates of those who had registered online outperformed those who had registered via traditional paper

registration on registration rates. Thesis. Georgetown University, 2014. n.p.: proquest dissertations, 2014. web.

¹⁵McGhee, Eric. *Expanding California's Electorate Will Recent Reforms Increase Voter Turnout?* Rep. N.p.: Public Policy Institute of California, 2014. Web.

¹⁶ *Voter Registration in a Digital Age: 2015 Update*. Rep. Brennan Center for Justice, 2015. Web. 7 Apr. 2017.

¹⁷*Online Voter Registration (Olvr) Systems in Arizona and Washington: Evaluating Usage, Public Confidence and Implementation Processes*. Rep. Washington Institute of the Study of Ethnicity and Race (Wiser) University of Washington, Seattle and the Election Administration Research Center (Earc) University of California, Berkeley, 1 Apr. 2010. Web. 7 Apr. 2017.

methods. During the 2008 election, online registrants in Washington had an 85.3% turnout, compared to an 82.4% turnout statewide. This difference was even large in Arizona where 94% of online registrants voted compared to 85% of traditional registrants. This difference in Arizona became even larger when looking at younger voters. Of individuals who were under the age of 34, 93 percent of those who had registered online voted, whereas only 73 percent of those who had registered “offline” voted.¹⁸

In addition to age, there are several other factors that influence the impact of OVR. Harry Baumgarten (2014) focused on the impact of “motor voter” policies in Colorado and found that increases in registration rates were highest among those under the age of thirty who had moved within the past two years. However, Baumgarten also found that there was virtually no increase in those registering who did not have a high school diploma. Further, Rugeley and Jackson (2009) found that “motor voter” policies helped to reduce the disparate impacts of registration requirements among the top three quarters of income levels. However, there was not a statistical impact among the lowest quarter of income levels¹⁹ Additionally, in Washington, shortly after OVR was implemented in 2008, those registering online were more likely be “slightly less educated, more independent in their partisanship, more likely to have lower income, and more likely to be white, Latino, or Asian.”²⁰ Each of these demographics represent populations where OVR could have a significant impact on registration and turnout rates.

¹⁸ *Online Voter Registration (Olvr) Systems in Arizona and Washington: Evaluating Usage, Public Confidence and Implementation Processes*. Rep. Washington Institute of the Study of Ethnicity and Race (Wiser) University of Washington, Seattle and the Election Administration Research Center (Earc) University of California, Berkeley, 1 Apr. 2010. Web. 7 Apr. 2017.

¹⁹ Baumgarten, Harry William. *Rocking the vote? A statistical analysis of the potential effect of online voter registration on registration rates*. Thesis. Georgetown University, 2014. n.p.: Proquest Dissertations, 2014. web.

²⁰ *Online Voter Registration (Olvr) Systems in Arizona and Washington: Evaluating Usage, Public Confidence and Implementation Processes*. Rep. Washington Institute of the Study of Ethnicity and Race (Wiser) University of Washington, Seattle and the Election Administration Research Center (Earc) University of California, Berkeley, 1 Apr. 2010. Web. 7 Apr. 2017.

Cost

Another key benefit for states with OVR has been a reduction in the monetary cost of voter registration. Of 11 states that had implemented OVR by 2015, the average up-front cost implementation was only \$249,000. In addition to the low cost of implementation, each state saved money on voter registration after implementation. Each of these states saved between \$0.50 and \$2.34 per online application when compared to paper registration. Not included in those states was California, who had an implementation costs much higher at \$1.8 million. However, even California's high up front cost was made back almost immediately. For example, while California's system cost \$1.8 million to implement, the state saved \$2 million in the first year of offering online registration.²¹

During the 2015 Texas House Elections Committee hearing regarding online voter registration, opponents stated that the cost of paper voter registration in Texas is already cheaper than in other states, and thus the potential cost savings would also be lower for Texas. Opponents stated that current cost to Texas for each paper application is twenty-five cents, much lower than the costs of paper systems mentioned in other states. However, this cost only reflects reimbursements by the state to counties for each paper application, but does not account for costs incurred by the county over twenty-five cents per application. However, there are significant costs to counties from high volumes of paper registrations. For example, extra staff is needed to enter data from paper applications into computer databases. Travis County would save \$100,000 a year on temporary workers who are hired for data entry if half of the county's applications

²¹ "Online Voter Registration, Trends in Development and Implementation." Pew Trusts. Pew Charitable Trusts Foundation, May 2015. Web. 8 Dec. 2016.

were submitted online.²² If implemented in Texas, OVR would in fact provide significant cost savings to counties and the state.

Security

While one of OVR skeptics' concerns is vulnerability to hacking or fraud, current OVR systems have demonstrated that security breaches are preventable and unlikely. No state with online registration has experienced a security breach. States have used several methods to protect the security of online registration systems, including encryption and Captchas. In fact, seven states that had implemented online registration by 2015 reported that reduced risk of fraud was a benefit of online registration.²³

One security concerns voiced by opponents of online voter registration is the possibility that OVR could make it easier to fraudulently register individuals. This fraudulent registration could involve unknowingly registering individuals, or registering individuals who are not eligible to vote. J. Alex Halderman, an expert in technological security for election policies from the University of Michigan, has studied this security issue and proposes several methods for preventing fraudulent registration:

For voter registration, a system should be able to see that you are who you say you are, and not being impersonated. To do that, the system needs to ask for information that only you are going to know and isn't easy for other people to get...There is a wider issue because you're putting your voter registration database where it can be modified over the

²² Texas House Elections Committee Hearing. Apr. 27, 2015. Web. 08 Dec. 2016.

²³ "Online Voter Registration, Trends in Development and Implementation." Pew Trusts. Pew Charitable Trusts Foundation, May 2015. Web. 8 Dec. 2016.

Internet. You want to be sure that the system has security testing and engineering to be sure you have the best precautions in place. In any case, when a voter changes the address online, the election officials should make sure to send a card to the old address and the new address, in case the change has been made falsely...For voter registration...we just need to apply existing technology correctly²⁴

Thus, with the application of certain precautions, fraud in online registrations can be mitigated. While fraud is preventable and many of these security concerns also exist within paper forms, OVR skeptics are still concerned that fraudulent behavior could be more difficult to track in an online system.²⁵ However, the Pew Research Center again advises that there are several security methods that can be used to prevent fraudulent behavior in an online system, such as data encryption, audit logs, captcha, secure networks, and flagging an IP address if there has been unusual activity detected that needs to be investigated.²⁶

The Texas Secretary of State's office indicated that, based on its current capabilities and existing online infrastructure, a fully online system for voter registration would be feasible and could be implemented safely. During the 2015 Texas House Elections Committee hearing regarding OVR, a representative from the Secretary of State's office said, "I don't expect it to be much different than how we have applications coming from the DPS now," because data received from applicants online could easily be compared with data already housed in the DPS to verify the applicants' identities.²⁷ While OVR is already compatible with the Secretary of State's

²⁴ "Interview with J. Alex Halderman on cybersecurity for online voter registration." NCSL. National Conference of State Legislatures, May 2013. Web. 6 Apr. 2017.

²⁵ "Interview with J. Alex Halderman on cybersecurity for online voter registration." NCSL. National Conference of State Legislatures, May 2013. Web. 6 Apr. 2017.

²⁶ Texas House Elections Committee Hearing. Apr. 27, 2015. Web. 08 Dec. 2016.

²⁷ Texas House Elections Committee Hearing. Apr. 27, 2015. Web. 08 Dec. 2016.

infrastructure, they could still take additional steps in implementing OVR to ensure security. J. Alex Halderman emphasizes the importance of these steps by stating: “Security experts must be consulted during the design of the system, adequate security testing must be conducted before the system goes live, and ongoing monitoring and threat-detection efforts must be built in.”²⁸ With these efforts, a very secure system of OVR could be created for Texas.

One part of these security precautions in Texas is requiring identifying information from applicants that only they would know. In 2015, State Representative Carol Alvarado explained that the identification requirements within her OVR bill would be a more secure and confidential method for identifying individuals than current paper methods. Her bill required four identifying pieces of information to be provided: date of birth, the last four digits of a social security number, an ID number, and the ID’s audit number. Alvarado argued that the addition of the audit number, a piece of information currently not requested in paper voter registration applications, increases the security of the application because it is a unique number, one that is even changed when individuals replace their ID.²⁹

Although there has not been any fraud or security breach attributed to OVR systems, the 2015 committee hearing about OVR involved significant debate over the security of OVR. While the Pew Charitable Trust Foundation, whose research has examined the security of OVR, sent a representative to the hearing to report on the positive security outcomes of OVR in other states, Representative Alvarado explained the security requirements included in her bill, and the Secretary of State’s office expressed no security concerns, committee members still expressed

²⁸ Underhill, Wendy. "No Lines Online: May 2013 | State Legislatures Magazine." NCSL. National Conference of State Legislatures, May 2013. Web. 6 Apr. 2017.

²⁹ Texas House Elections Committee Hearing. Apr. 27, 2015. Web. 08 Dec. 2016.

concerns about OVR security.³⁰ In other states, many legislators expressed concerns about security during initial discussion about online voter registration. However, state officials have reported that while, “some people voiced security concerns...in time were generally convinced of the program’s reliability.”³¹ Thus, despite continued concerns in Texas, trends in other states suggest that these concerns can be mitigated over time.

Accuracy

Another benefit of online voter registration is an increase in the accuracy of voter rolls. Paper applications lead to more mistakes on voter rolls, as mistakes are often made while entering information from paper applications into computer databases. These mistakes are caused by illegible handwriting and human error during data entry. Online forms remove these sources of error, as the applicant types and submit the information themselves. Online applications also make it easier to correct mistakes when they are made, as these corrections can also be completed online.³² The Pew Charitable Trust Foundation has reported that a paper registration is five times more likely to have an error than an application submitted online. Additionally, a registration completed on paper must be transported to a government office. This allows room for error in transportation, such as mail errors or being lost and never delivered, which is removed in online applications.

The Presidential Commission on Elections Administration published a report of

³⁰ Texas House Elections Committee Hearing. Apr. 27, 2015. Web. 08 Dec. 2016.

³¹ *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration*. Rep. N.p.: Presidential Commission on Election Administration, 2014. Web.

³² NCSL's Nov. 12, 2013 Webinar, *Online Voter Registration: The Bipartisan Trend in Elections*.

recommendations in 2014, in which they highlighted the importance of the increase in accuracy that OVR provides:

An accurate voter registration list is often a prerequisite to effective election planning and administration. A list filled with inaccuracies, likewise, produces downstream problems throughout the administration of an election. With the enhanced accuracy and efficiency that online registration systems provide, election administrators are able to respond more effectively to a number of recurring challenges.³³

Logistics

Online voter registration also improves the efficiency and logistics of the election process by reducing: lines, security issues, provisional ballots, barriers for voters with impaired mobility, and the cost of voter rolls management for inaccuracies.³⁴ The reduction of manual data entry and time for transportation of paper applications also reduces the time that it takes for an individual's registration to be processed. For example, Washington "reported that electronic registration reduced application processing time from multiple weeks to one day."³⁵ This reduction in processing time could potentially be used to reduce the amount of time required between registration and voting, which is currently thirty days in Texas. This improved efficiency could allow for a shorter waiting period, or even first time registration. Ultimately, OVR improves the accuracy of voter registration and voter rolls. It streamlines and improves the voting process. Increased accessibility also encourages more eligible individuals to vote.

³³*The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration*. Rep. N.p.: Presidential Commission on Election Administration, 2014. Web.

³⁴ *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration*. Rep. N.p.: Presidential Commission on Election Administration, 2014. Web.

³⁵ *Voter Registration in a Digital Age: 2015 Update*. Rep. Brennan Center for Justice, 2015. Web. 7 Apr. 2017.

Implementing OVR in Texas could lead to a more accurate and streamlined voting process.

Signature

While OVR would provide significant benefits to Texas, these benefits are limited by requiring online registrants to already have a signature on file with the Texas DPS. The benefits from OVR could be expanded to more individuals if applicants were not required to already have a signature on file. However, all OVR bills that have been filed in the Texas Legislature are based around the central tenet that an applicant will already have a signature on file with the Department of Public Safety. This requires applicants to have previously signed an application for a driver's license or other state ID. However, this prevents individuals that do not have a state ID from using such an online system. As with the debate over voter ID laws in Texas, this practice of excluding those without a state ID affects a considerable number of Texans, as about 600,000 residents lack an ID. This lack of accessibility disproportionately applies to racial minorities, as Texans without a state ID are significantly more likely to be Black or Latino.

While this signature requirement limits the benefits of OVR, Texas would still reap many benefits from OVR with the requirement. Individuals who do not meet this signature requirement will still be able to submit a paper registration, while the rest, and majority, of Texans would be eligible to use an online system. However, Texas could potentially look towards removing this signature requirement in the future to increase the accessibility of online registration. Since 2014, several states have implemented methods for individuals to register online without previously having a signature on file with the state. Some states, like Minnesota, simply do not require any signature, and ask the individual to submit their social security number in the application instead. This is used as a method to identify the individual in comparison the social security numbers in

their database, as well as screen for identity fraud by asking for personal and confidential information unique to the applicant, all without a signature. Other states, like Delaware and Missouri, allow an individual to submit a signature along with their online application via a stylus or touch screen on a mobile phone or tablet.³⁶ While it is highly unlikely any of these methods would be employed by Texas soon, they are important considerations to keep in mind for improving an OVR system in Texas later down the road.

³⁶ *Online Voter Registration Trends in Development and Implementation*. Rep. N.p.: Pew Charitable Trusts, 2015. Web.

Chapter 2: Implementing OVR Through the Legislative Process

For online voter registration to be implemented in Texas, the state legislature must pass legislation permitting and codifying electronic voter registration. Current Texas law does not permit county registrars to implement an online system. OVR legislation, as discussed, has been introduced in the past, but each time has either been left pending without a vote after a committee hearing or never even received a committee hearing. 27 states and the District of Columbia have successfully passed legislation that created online voter registration. The number of states passing this legislation has recently accelerated, with 19 of these bills being passed since 2012. There are clear benefits of OVR were outlined in the previous chapter and many states have enacted legislation for online voter registration. *Will the Texas Legislature enact legislation to create an OVR system?*

There are several reasons that, at first, it might seem that the Texas Legislature will not pass OVR legislation. With much of the rhetoric in Texas and the Republican Party about voter fraud, one might assume that Texas is unlikely to pass OVR legislation since it is a Republican state that recently passed a strict photo ID law. Indeed, before it was put on hold by courts, the voter ID requirements in Texas were among the strictest in the country, which would seem to indicate a general concern over voter fraud and security in the Texas Legislature, and thus a potential obstacle for OVR approval within the same legislative body. Additionally, online voter registration is often perceived to primarily benefit Democrats, and thus pose a threat to Republican legislators, making them less likely to support OVR legislation.

However, an analysis of potential obstacles to OVR legislation in Texas finds that it is still plausible that the Texas Legislature would successfully pass OVR legislation in the future. By looking at recent discussions in the Texas Legislature about online voter registration, as well

as trends in similar states, there is not enough of a connection between partisanship, implementation of harsh election laws like strict voter ID requirements, or the vulnerability of certain districts, to indicate that the Texas Legislature will not enact online voter registration. While these issues may each play a role in the behavior of some individual legislators, they are not enough to prohibit the legislature from passing OVR legislation, because a broad trend or indicator that would make the Texas Legislature unlikely to enact OVR legislation is absent. However, while it is possible that the Texas Legislature could pass OVR legislation, this does not guarantee that it will do so. Instead, OVR is still faced with other significant obstacles - concentrated opposition from a small group of advocates, a need for clearer communication to legislators about the specific mechanics and security of online voter registration, and a lack of support from Republican leaders.

In this chapter, I first use case studies of other states to explain that partisanship and voter ID requirements do not preclude the possibility of Texas passing OVR legislation. Then I compare successful OVR passage in other states with the bill failures during the 2015 Texas legislative session. Finally, I discuss the obstacles that Texas faces and how Texas can overcome them. I will discuss each of these topics in the context of OVR in other states, and then compare those states to Texas. The comparison to Texas will focus on the two OVR bills that received a hearing, with fierce opposition, during the 2015 legislative session - House Bill 953 by Representative Carol Alvarado and House Bill 76 by Representative Celia Israel, which were identical. These bills would have created an online system that required registrants submit a state ID number, state ID audit number, date of birth, and social security number, as well as already have a signature on file with the state. Individuals without this information would not be eligible to register online, only via a paper application.

Role of Partisanship on Legislation Passage

One of the questions surrounding Online Voter Registration legislation in Texas is whether OVR legislation can be passed in a Republican controlled legislature, or whether a partisan divide would prevent support from Republican legislators. OVR has generally been viewed as a bipartisan endeavor across the country, with many Republican controlled legislatures passing legislation that implemented an online system. While this legislation has been supported by members of both parties, Democrats are still statistically slightly more likely to vote for OVR legislation than their counterparts. In an analysis of record votes on OVR legislation, 90 percent of Democrats voted for OVR, compared to only 70 percent of Republicans. While this is still a large majority of Republicans, and Republicans are “more likely than not” to vote for OVR, this difference indicates there is some partisan divide regarding OVR. Despite a lot of support, the Republican Party demonstrates less enthusiasm for OVR than the Democratic Party.³⁷

This section analyzes how partisanship has contributed to OVR debate and legislative outcomes in other states, and then compares those cases to the impact of partisanship in Texas on OVR legislation. As Texas has a legislature with a strong Republican majority, where they outnumber the Democratic minority nearly two to one, this section will focus on Georgia and Tennessee which have similarly strong Republican legislatures and still passed OVR legislation.

Partisanship in Georgia

The partisan make-up of the legislature in Georgia is very similar the partisanship of the Texas in legislature, as they are both about two thirds Republican; however, unlike the Texas Legislature, Georgia passed OVR. Georgia’s bicameral legislature, as well as its Governor, are

³⁷ Hicks, William D., Seth C. McKee, and Daniel A. Smith. "A Bipartisan Election Reform? Explaining Support for Online Voter Registration in the American States." *American Politics Research*. American Politics Research, 02 Aug. 2016. Web. 08 Dec. 2016.

consistently and solidly Republican. Both chambers in Georgia's legislature have been under Republican control since 2002, and today there are nearly twice as many Republicans as Democrats in the state house and senate. Georgia passed legislation allowing online voter registration in 2012.

While OVR legislation generally has slightly more support from Democrats, the OVR legislation in Georgia had significantly more Republican than Democratic support within the legislature. The bill was sponsored by a Republican legislator, and received support from every single Republican state representative and senator. Whereas only 32% and 6% of Democratic representatives and senators, respectively, voted for the bill.³⁸ The lack of support for Senate Bill 92³⁹, which created OVR in Georgia, can be likely be explained by the broad expanse of voting and election issues that were addressed within the bill. These other policies included in the bill, and not OVR, likely created this partisan divide. However, several Democrats in the Georgia legislature had previously authored and sponsored another bill that same session that also proposed OVR, indicating that Democrats did supported the idea of OVR. Thus, it is likely that the large amount of Georgia Democrats who voted against OVR implementation through SB 92 in 2012 is linked to other issues within the bill, and that the majority supported OVR based on previous and subsequent legislation. Thus, OVR was a bipartisan measure within the Georgia legislature. Republicans demonstrated support for OVR in Georgia by including it within a bill that they authored. Democrats also demonstrated support for OVR by sponsoring legislation

³⁸ Hicks, William D., Seth C. McKee, and Daniel A. Smith. "A Bipartisan Election Reform? Explaining Support for Online Voter Registration in the American States." *American Politics Research*. American Politics Research, 02 Aug. 2016. Web. 08 Dec. 2016.

³⁹ Georgia (State) General Assembly. 2011-2012 Regular Session. SB 92 Elections; Provide Limitations on When In-person Absentee Balloting May Be Conducted; Advance Voting." Web. 7 Apr. 2017.

related to it before and after SB 92 - they have since proposed legislation to improve upon the OVR system.

Outside of debate in the legislature, both political parties in Georgia have spoken positively in public about the benefits of online registration. For example, the Republican Secretary of State, Brian Kemp, who is responsible for voter registration in the state, boasted in 2016 that, “It has never been easier to get registered to vote in Georgia, where individuals can register to vote or update their information online, via text, or by using the office's free mobile app.”⁴⁰

Partisanship in Tennessee

Tennessee’s Legislature provides another similar comparison to the partisan makeup of the Texas Legislature, and passed OVR legislation even more recently than Georgia. Like Texas, Tennessee has a solidly Republican legislature. About a quarter of the house seats and less than twenty percent of the senate seats are occupied by Democrats. Both the house and the senate have been controlled by a Republican majority since 2008. Even with a Republican dominated legislature, Tennessee passed OVR legislation in 2016. The bill was sponsored by the Republican majority leader in the Tennessee House, and was cosponsored by another Republican in the House. Additionally, an identical companion bill was filed by another Republican Senator. Although their legislation did not pass, several Democrats also filed bills addressing OVR.

⁴⁰ "Georgia Secretary of State Kemp: Georgia's Online Voter Registration System Saw Record-Breaking Activity on Voter Registration deadline." Us Fed News Service, Including Us State News; Washington, d.c. Ht Media Ltd, 14 Oct. 2016. Web. 7 Apr. 2017.

Ultimately, legislation filed by the Republican legislators passed unanimously in the Tennessee legislature.⁴¹

Georgia and Tennessee are both examples of conservative states having bipartisan, or Republican led, paths for passing OVR legislation. While some may assume that Texas is unlikely to implement OVR because of its Republican dominated legislature, the Georgia and Tennessee examples suggest that these partisan conditions do not prevent a legislature from passing OVR legislation. Georgia and Tennessee, as well as the 70 percent likelihood that Republican legislators vote for OVR legislation, provide evidence that a Republican legislature can pass OVR legislation. The remaining question is whether OVR has the potential to be a bipartisan measure in the Texas Legislature.

Partisanship in Texas

The Texas Legislature has had substantial bipartisan support for OVR among the House. For example, Representative Celia Israel's bill, HB 76, received 76 cosponsors in 2015. 25 of these cosponsors were Republican. In 2015, there was also a bill filed by Republican Representative Patricia Harless, HB 312.⁴² Thus, while there were more bill authors and cosponsors who were Democrats, there were still a substantial number of Republicans willing to support OVR. However, despite this bipartisan support, OVR bills saw pointed Republican opposition during the committee hearing about OVR in 2015, much of which focused on the partisan implications of OVR. This section will evaluate this partisan opposition and predict how it could impact OVR legislation in Texas in the future.

⁴¹ Tennessee (State) General Assembly. 2015-2016 109th General Assembly. Roll Call: TN SB1626. Bill Title: As enacted, establishes an online voter registration system beginning July 1, 2017. - Amends TCA Title 2, Chapter 2, Part 1. Web. 7 Apr. 2017.

⁴² Representative Israel capped the number of cosponsors to match the bill number, but has indicated that otherwise the number would have been higher

During the Texas House Elections Committee hearing in 2015, debate over OVR bills HB 76 and HB 92, by Representative Celia Israel and Representative Carol Alvarado respectively, became very partisan. Support for the bill during the committee hearing was starkly divided between support from the two Democrats on the committee, one of which was Representative Celia Israel who had authored HB 76, and the five Republican members of the committee. The five Republican committee members all expressed skepticism of or opposition to the bill. Although the bills were not voted on, discussion during the hearing made it apparent that a partisan divide existed. Notably, Representatives Schofield and Fallon, both Republicans on the committee, contributed the most to directly addressing this partisan divide. They were the most vocal Representatives in expressing opposition to OVR during the hearing, and specifically asked questions about partisan subject. For instance, they discussed the possibility of immigrants or non-citizens exploiting an online system to register to vote illegally, which is generally a Republican backed issue.

Additionally, this partisan division was explicitly addressed and widened by several members of the Harris County Republican Party who testified against both bills. Mike Sullivan, who was the Harris County Tax Assessor, suggested during the hearing that OVR could lead to more Democrats voting and a subsequent reduction in Republican elected officials. Sullivan pointed to Colorado, whose legislature switched to Democratically controlled after the state implemented OVR, and used this as an indication that a similar change would happen in Texas. While Representative Israel stated that she was offended by this accusation of OVR being partisan, as it has been a bipartisan issue nationally and among her bill's cosponsors, the debate still became very partisan due to several Republican witnesses and Representatives during the hearing.

This partisan discussion and divide among the committee was notably different from discussions and votes on OVR in other states.⁴³ For instance, during Tennessee's committee hearing on OVR, both a Republican and Democratic Senator asked clarifying questions about the safety of OVR, and had their concerns easily mollified by the Republican Senator sponsoring the bill. Further, on the floor of the Tennessee House of Representatives, when the bill was being voted on, a Democratic Representative commended the majority leader for bringing forth such a bipartisan bill and asked to be added as a cosponsor.⁴⁴ Instead of the partisan divide that emerged in Texas' committee hearing, Tennessee saw bipartisan discussion and passage of OVR legislation.

This partisan controversy that emerged among the Texas committee members, as well as the Republican Party officials who testified during the hearing, could have stemmed from several reasons. For example, the bills being discussed were originally authored by Democratic Representatives. Whereas, in states like Tennessee, the legislation was brought forth by a Republican member of the majority party. This could have perhaps lent more reassurance to Republican members of the Tennessee legislature that had reservations. Additionally, Texas may be viewed as a less electorally secure Republican state than other states where OVR has been discussed. For instance, there has been a robust discussion about the possibility of "turning Texas blue" as the demographics of the state (with a growing Hispanic population) change and open the possibility of increasing the Democratic electorate in the state. For instance, while Texas is generally viewed as a reliably Republican state in presidential elections, there was briefly

⁴³ Hicks, William D., Seth C. McKeel, and Daniel A. Smith. "A Bipartisan Election Reform? Explaining Support for Online Voter Registration in the American States." *American Politics Research*. American Politics Research, 02 Aug. 2016. Web. 08 Dec. 2016.

⁴⁴ Tennessee Senate Finance, Ways, and Means Committee. Apr. 7, 2016. Web. 15 Mar. 2017.; Texas House Elections Committee Hearing. Apr. 27, 2015. Web. 08 Dec. 2016.

speculation about the state going for Hillary Clinton during the 2016 election. While this did not result in being the case, the state did have a closer election than it has in recent history.⁴⁵ This suggests that Republicans may be concerned about electoral shifts in Texas, leading them to be more concerned by OVR than Republicans in other more electorally secure states.

Next, it is important to question whether this partisan divide would have extended to the entirety of the Texas Legislature or if it was stemming from a small sample size: the seven legislators on the committee and the handful of witnesses who testified against the bill. The 25 Republican cosponsors on Representative Israel's bill, HB 76, suggesting that there would have been support for the bills if they had reached the full Texas House of Representatives. To answer why there was more bipartisan support for OVR among these cosponsors than during the committee hearing, I looked at the relative ideologies and partisanship levels of different Republican legislators.

The relative partisan, conservative or liberal, positions and voting records of members of the 2015 Texas Legislature were quantified and compared by Mark Jones, a political scientist from Rice University. Figure 3 compares Jones' rankings for Republican Representatives who were on the House Elections Committee in 2011. This comparison makes it apparent that the committee skewed considerably to the more conservative flank of the Texas House. When the Republican House members were ranked against each other from 1 (most liberal) to 100 (most conservative), the five Republican members of the Elections Committee were in the most conservative third of the entire house, and the most conservative half of all Republican house members.⁴⁶ This suggests that bipartisan support could be more difficult to acquire from the

⁴⁵ Ramsey, Ross. "Analysis: The Blue Dots in Texas' Red Political Sea." *The Texas Tribune*. N.p., 11 Nov. 2016. Web. 07 Apr. 2017.

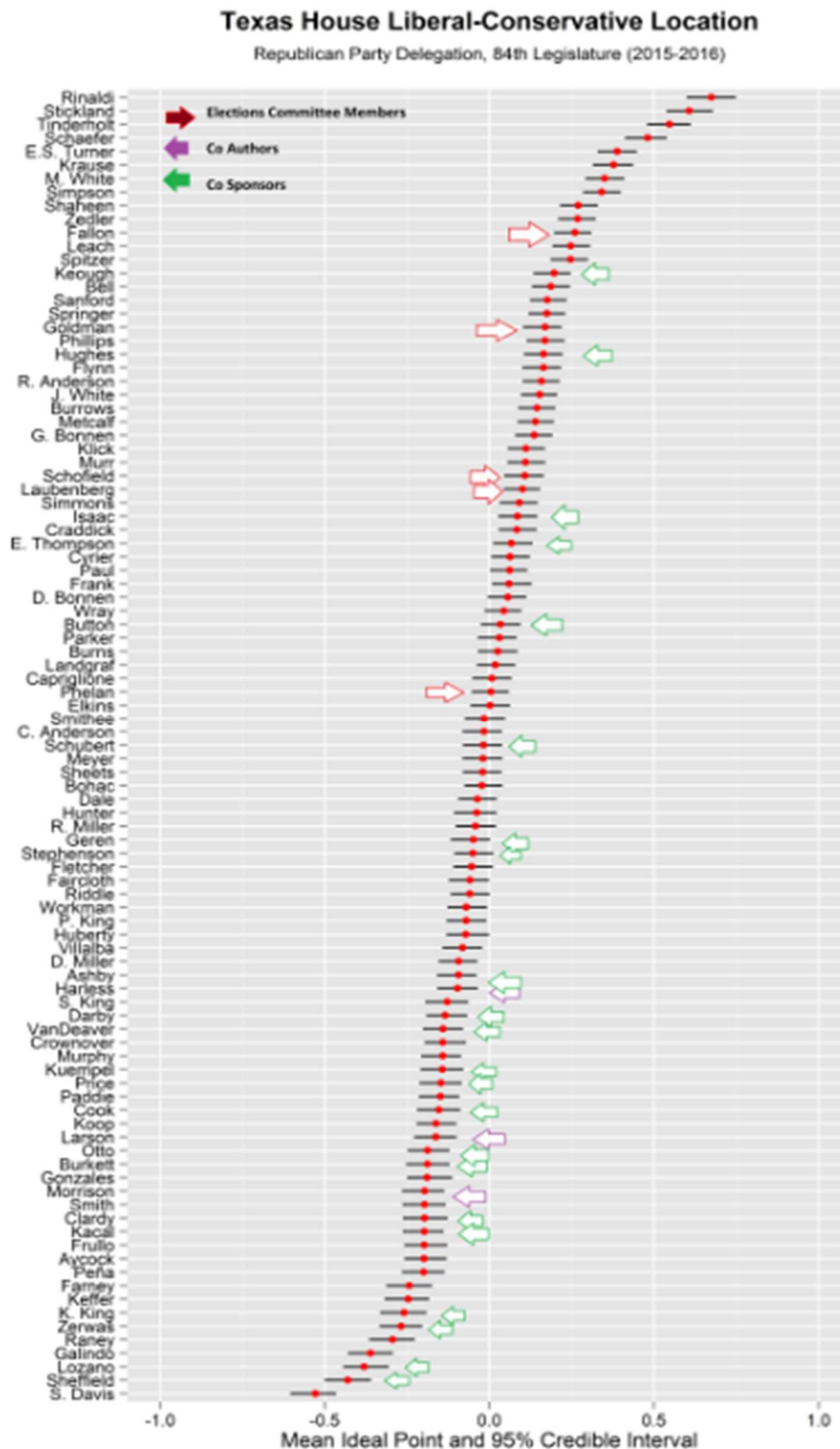
⁴⁶ Jones, Mark P. "The 2015 Texas House, from Left to Right." *TribTalk*. The Texas Tribune, 7 July 2015. Web. 07 Apr. 2017. <http://www.legis.state.tx.us/BillLookup/Authors.aspx?LegSess=84R&Bill=HB76>

more conservative legislators, and OVR legislation could struggle to pass out of committee hearings if the committee members are more conservative than the rest of the legislature.

Figure 3: Liberal-Conservative Ratings of Republicans on the House Elections Committee. Ranked among the 100 Republican Representatives in the Texas House and scored between -1 and 1, with 1 being the most conservative.

Lib-Con Ranking	Representative	Lib-Con Score	Intra-Party Lib-Con Location
104	Phelan, Dade	0	Republican Center
119	Laubenberg, Jodie	0.1	More Conservative than 1/2 of Rs
120	Schofield, Mike	0.11	More Conservative than 1/2 of Rs
131	Goldman, Craig	0.17	More Conservative than 1/2 of Rs
138	Fallon, Pat	0.26	More Conservative than 2/3 of Rs

Figure 4: The Liberal-Conservative ranking of Republican Representatives who coauthored or cosponsored HB 76.



Although the Republican Representatives on the Texas House Committee were more conservative than the average Republican Representative in the legislature, being a more conservative member of the House did not indicate a Representative would oppose OVR. the Representatives that coauthored and cosponsored HB 76 in 2015 were more liberal members of the Republican party; however, there were several that were equally or more conservative than the Representatives serving on the House Elections Committee. In Figure 4, the red arrows on the left indicate members of the Elections committee. These members are clustered towards the top, with the most conservative members. The coauthors and cosponsors are indicated with green and purple arrows; these are clustered towards the bottom where the more liberal members of the party are. However, there were six cosponsors who were in the most conservative half of all Republican Representatives.

Partisanship and Republican control do not indicate that OVR cannot succeed in Texas, but they do make the process more complicated. OVR in the Texas Legislature has received bipartisan support, but is also haunted by a minority of Republican individuals in the legislature and in the state who are skeptical of its implications for the state and voters. Potential solutions for overcoming these roadblocks in the House Elections committee could include shifting the conversation away from a Democratic proposal to a different framing, where OVR support is instead championed by the Republican establishment. Georgia and Tennessee, which are Republican controlled, both saw OVR passed when it was brought forth by Republican legislators. However, the same OVR legislation filed by Democrats in Georgia was not successful. Tennessee benefitted from the institutional support backing OVR legislation. SB 1626 was authored by a Republican Senator in the majority party, its House companion was authored by the majority Republican leader, and the bill had been originally proposed to

legislators by the Secretary of State's office, lending it more credibility. In these respects, there is a marked difference from the trend concerning OVR in Texas. Only Democrats filed OVR legislation during the 2017 Texas legislation session. These Democrats are a part of the minority party in Texas, and there has not been additional institutional support from the Secretary of State or any other source. While OVR has the potential to be a bipartisan issue in Texas, as demonstrated by the wide breadth of Republican legislators who have cosponsored OVR legislation, OVR needs more Republican support from the beginning to combat partisan skepticism from Republican legislators.

The Effect of Voter Fraud Concerns on Bill Passage

The partisanship of the legislator is a critical component for the path forward for OVR in Texas. It is also important, however, to consider the overall attitude towards election reform and voter fraud within the Texas Legislature, and whether those attitudes could prevent legislators from supporting OVR. One tangible indicator of these attitudes is the presence and strictness of voter ID laws. In 2013, The Texas Legislature passed one of the strictest voter ID requirements for voting in the country, frequently citing the importance of using this policy to prevent voter fraud.⁴⁷ Several of the same themes regarding election security and fraud prevention that led to this voter ID law being passed were also discussed during the House committee hearing in 2015 about OVR. This leads to the question: Do the presence of strict voter ID laws and voter fraud concerns indicate a state will not pass OVR? This section explains that, generally, these attitudes do not extend to OVR or prevent OVR legislation from passing. This will be demonstrated by

⁴⁷ While the legislature passed this policy, it has been altered due to court decisions deeming it unconstitutional. However, the legislature still passed these requirements, indicating they would prefer this level of strictness in their ID requirements.

analyzing states that have strict voter ID requirements, but have also passed OVR legislation, and then comparing these states to Texas. Voter ID policies will be used as an indicator of broader concerns among legislators and the state about voter fraud, and potentially receptiveness to OVR.⁴⁸

Voter ID and OVR Passage in Georgia

Like Texas's voter ID requirements, in 2007 Georgia implemented a strict photo ID requirement which mandated voters to present a state or federal ID that includes a photo. While this did not preclude Georgia from passing OVR legislation, as previously discussed, the Republican support for OVR in Georgia was markedly different than the vote to implement a strict voter ID requirement nearly a decade earlier. In 2006, Georgia passed SB 84, which implemented one of the strictest voter ID requirements in the country. In the senate, all the votes for the measure were cast by 32 Republicans, whereas all Democrats in the senate voted against the bill (with 2 Republicans voting against the bill as well). In the Georgia house of representatives, there were slightly more differences in partisan allegiance, but 93% of votes for the bill were cast by Republicans, and 93% of the votes cast against the bill were by Democrats.⁴⁹ Despite these legislative attitudes towards taking a strict stance on voter fraud and election security, through voter ID legislation, this still did not preclude the state legislature from supporting OVR.

⁴⁸ While voter ID laws are used as an indicator of attitudes towards voter fraud and election security, these attitudes could also be measured more directly by considering discussion of voter fraud in the legislature and among news sources in the state.

⁴⁹ *Vote Smart*. Georgia Key Votes "SB 84 - Voter Identification - Key Vote." N.p., 25 Jan. 2006. Web. 07 Apr. 2017.

Voter ID and OVR Passage in Tennessee

Tennessee also has a strict voter ID requirement - again just like Texas – but has also passed OVR legislation. The bipartisan support OVR received in the Tennessee legislature is especially notable when compared to the partisan disagreement over voter ID requirements that has divided the legislature since its implementation in 2011. Senate bill 16, which implemented strict photo ID requirements for voters in Tennessee saw every Democrat vote against it in the legislature, and all but 9 republicans supporting the bill.⁵⁰ Using voter ID laws as an indicator of voter fraud concern and hesitancy towards election reform, Republican support for voter ID might seem to imply that Republicans would be opposed to OVR. However, Tennessee Republicans still voted for OVR despite also adamantly supporting voter ID requirements.

Voter ID Support Without OVR in Arkansas

Alternatively, Arkansas has a strict voter ID requirement, but has not passed OVR legislation. In 2012, when Republicans gained a slight majority in the house and had nearly two thirds of the seats in the senate, the Arkansas legislature approved SB 2, which passed strict voter ID requirements along party lines.⁵¹⁵² Thus, Arkansas provides an example of a legislature which, like Texas, has prioritized voter fraud issues within voter ID requirements, and has also not passed OVR legislation.⁵³

⁵⁰ *Vote Smart*. Tennessee Key Votes "SB 16 - Voter Identification Requirements - Key Vote." N.p., 30 May. 2011. Web. 07 Apr. 2017.

⁵¹ <http://www.arkleg.state.ar.us/assembly/2013/2013R/Pages/BillInformation.aspx?measureno=sb2>

⁵² *Vote Smart*. Arkansas Key Votes. "SB 2 - Requires Photo Identification to Vote - Key Vote." N.p., 1 April. 2013. Web. 07 Apr. 2017.

⁵³ While Arkansas' Supreme Court struck down this strict photo ID requirement as unconstitutional, and removed the requirement, Arkansas' legislature can still be analyzed under the assumption that legislators still prefer a strict voter ID requirement since they voted for it in 2013, and have made significant efforts to reimplement voter ID requirements in the aftermath of the court decision.

Additionally, Arkansas provides an example of a Democratic controlled legislature, prior to 2012 elections, that had not implemented strict voter ID requirements. In 2013, AR H 1650 was proposed in the Arkansas legislature by a Republican representative, Mary Slinkard. However, the bill saw no movement after being filed and referred to a committee. Unlike Texas, the bill wasn't even discussed amongst committee members.⁵⁴ Thus, Arkansas demonstrates that although there are instances of states with strict voter ID requirements passing OVR, there are also instances analogous to Texas where strict voter ID laws goes alongside a lack of progress related to OVR. Although it is difficult to ascertain whether Voter ID laws and OVR laws are related in a statistically meaningful way, it appears that it is a plausible relationship with anecdotal evidence.

Lack of Voter ID and Passage of OVR in Oklahoma

Oklahoma provides an example of a state that has less stringent attitudes towards voter ID legislation, and has also passed OVR legislation. In addition to a photo ID, a voter in Oklahoma can provide their voter registration card, or cast a provisional ballot which state officials will then verify and ensure the identity of the voter. While the state could be considered as having a photo ID requirement since most voters will present a photo ID, the state's willingness to also accept another form of identification indicates that legislators were less concerned with the risk of voter fraud and find not photo IDs as acceptable by voters. Oklahoma has also had a Republican controlled legislature since 2008, and in 2017 has over three times as many Republicans as Democrats in the house and senate. Here we have a case of a solidly Republican legislature, which is generally associated with stricter voter identification

⁵⁴ Arkansas (State) Legislature. HB 1650 - an Act for the Secretary of State - Electronic Voter Registration Record Program Appropriation for the 2013-2014 Fiscal Year. 3 Mar 2013. Web. 7 Apr 2017.
<http://www.arkleg.state.ar.us/assembly/2013/2013r/pages/billinformation.aspx?measureno=hb1650>

requirements and concern about voter fraud, taking a much laxer approach towards voter fraud concerns and voter ID. In this case, we do see this lack of concern with creating stringent voter fraud policies translate into also having an OVR system - which can also be associated with less voting restrictions. In 2015, OVR was passed in SB 313 which was filed by a Republican member of the Senate.⁵⁵

Voter ID in Texas

While Texas' strict voter ID requirements indicate concerns about voter fraud, Texas legislators are not necessarily opposed to OVR because of these voter fraud concerns. Georgia and Tennessee, just as they did with partisanship, provide examples where the climate is like Texas but the legislatures were still amenable to OVR legislation. This indicates that it is possible to separate voter fraud concerns and election reform skepticism from OVR.

There are, however, specific instances of Texas legislators making the explicit connection between opposition to OVR and concerns over voter fraud which indicate that these attitudes are obstacles to OVR in Texas. In response to many of the security concerns discussed by witnesses and Representatives during the 2015 House Elections Committee Hearing, Representative Israel state that these concerns would take "massive voter fraud." Although she stated that this simply was not occurring, and nobody argued otherwise, much of the conversation and concern still centered around the concern that OVR could go hand in hand with voter fraud. For example, there were implications that individuals or organizations could falsely register individuals who were unaware that they were being registered, and abuse OVR, ideas that were predicated on identities not being verified in the registration process. To overcome these challenges in

⁵⁵ Oklahoma State Legislature. SB 313 Elections; providing for electronic voter registration; providing procedures. 2 Feb 2015. Web. 7 Apr 2017. <http://www.oklegislature.gov/BillInfo.aspx?Bill=SB313&Session=1500>

attitudes, Texas must find a way to separate the OVR discussion from voter fraud and other themes that often arise and lead to voter ID policies.

Effect of Online Security Concerns on Legislators

Another obstacle for OVR is concern that a voter registration database or online system could be have a security breach and be hacked by a third party. Just as with partisanship and concerns about voter fraud, security has become an obstacle to OVR in Texas, but does not mean OVR cannot be passed in Texas. Even further, the security benefits of OVR have the potential to be an asset to the discussion and overall support for OVR within the Texas Legislature. This will be demonstrated by discussing how security regarding OVR in Tennessee was an asset, contrasting this with the discussion in Texas, and recommendations for changing the conversation in Texas.

Online Security Concerns in Tennessee

To understand how a largely Republican and voter fraud concerned legislature in Tennessee, as previously discussed, could also support OVR, it is important and helpful to consider the discussion that surrounded the issue in the legislature - much of which centered on security benefits. When SB 1626 proposed OVR in Tennessee, it was first considered in the Senate State and Local Committee. The bill was laid out by the Chair of the committee, Ken Yager. During Yager's explanation of the bill to the committee, he focused on the benefits that OVR can provide and the minimal online security risk associated with OVR. Senator Yager highlighted benefits such as improving the accuracy of voting records as hand written voter registration applications often have errors or are difficult to read, and that an online option could

make it easier for military members who are serving overseas to register to vote. Second, Senator Yager heavily emphasized the security of an online system. He explained that while he is, “always concerned about the integrity of the voting process,” his bill “would provide for the security and integrity of the voting process,” and had “numerous fail safes.”⁵⁶

Senator Yager also emphasized that he had carried this bill on request from Tennessee’s Secretary of State. Although the Secretary of State’s office had previously not supported OVR because the “infrastructure wasn’t there,” and concerns about voter fraud, their opinion had changed on both issues and led them to support the implementation of OVR. The Secretary of State’s office testified to the committee that they had worked within their office and with the Department of Public Safety to begin to create the necessary system and infrastructure to put an online system into place. Additionally, they stated their concerns about voter fraud had been abated after seeing that other states had implemented OVR systems for a significant period without having any incidences of fraud.⁵⁷

After this discussion and vote, the bill was next passed through the Senate Finance, Ways, and Means Committee with minimal discussion, and was then brought to a vote on the Senate floor. On the Senate floor, Senator Yager again emphasized the convenience, safety, and benefits of the online system it proposed. With no debate, the bill was passed unanimously out of the Senate. The bill was then laid out on the House floor by the majority leader, Representative Gerald McCormick. He again emphasized the “safe-guards” against voter fraud, the verification system, the substantial number of states that already had OVR, and the fact that this had been a bipartisan effort in many states. Democratic Representative Kevin Dunlap even brought up voter

⁵⁶ Tennessee State and Local Means Committee. Apr. 2016. Web. 15 Mar. 2017.

⁵⁷ Tennessee State and Local Means Committee. Apr. 2016. Web. 15 Mar. 2017.

ID in connection to OVR, to which Representative McCormick said the issue was a work in progress. However, aside from those comments, there was no other discussion of the bill before it was passed unanimously out of the Tennessee House.⁵⁸

Online Security Concerns in Texas

Whereas similar discussions in other states, even conservative states concerned about voter fraud and voter ID like Tennessee, have focused on the improved efficiency, security, and technological advancement surrounding OVR, the Texan House Elections Committee experienced stringent opposition to the bills' proposals. Initially, several representatives from the Harris County Republican Party spoke in opposition to HB 953, including representatives from the County Clerks, County Tax Assessor, and Harris County Republican Party. Most their concerns centered around security concerns of using an online system. For instance, Ed Johnson of the Harris County Clerk's Office demonstrated, during the hearing, how someone could simply take a photo of another person's driver's license and potentially use that information to fraudulently register to vote. Similarly, a representative from the Harris County Clerk's Office was concerned about the mechanics of transferring information from the DPS to the Secretary of State's office, potential issues with DPS records (such as having trouble with hyphenated names) and the potential of third parties hacking into an online system.

There are several notable similarities and differences to the committee hearing over OVR in Tennessee, which saw the bill easily pass through the Tennessee legislature even though it is also an overwhelmingly Republican State with historical concerns about voter fraud and voter ID. One area of some similarity was testimony from the Secretary of State's office, which

⁵⁸ Tennessee Senate Finance, Ways, and Means Committee. Apr. 7 2016. Web. 15 Mar. 2017.

handles the verification of identity for voter registration in both states. In Texas, the Secretary of State's office testified on HB 953 as explicitly stated that they did not have, "any extra security concerns," and they did not expect an online system, "to be much different than how we have application coming from the DPS now."⁵⁹ While this approach from the SOS in Texas also highlighted the safety and ease with which a system could be integrated into the current system, similar to Tennessee, they served as more of a neutral resource than an advocate for online voter registration. The Texas Secretary of State testified *on* the bill instead of registering for or against it with the House Elections Committee, whereas the Tennessee SOS office brought the bill to Representative Yager in the first place and was adamantly vocal about their support and confidence for legislation implementing an online voter registration system. While the Texas Secretary of State's office did not express any reservations about OVR, they also were not as actively supportive as their counterparts were in Tennessee where OVR was more successful.

Texas also had more skepticism from witnesses who testified in front of the committee, as well as committee members. Even though over 80 supporters had visited the Texas Capitol that day to register their support for the bills, the members from Harris County were a very vocal minority and their complemented the skepticism that several of the committee members already had. During the House Elections Committee Hearing, Representatives Mike Schofield and Pat Fallon, asked several questions about the possibility of a security breach by hacking records, the possibility of non-citizens using such a system to register to vote, and other technology concerns. Representative Schofield asked a representative from the state government why the state of Texas does not allow applications for new driver's licenses to occur online, and if our systems are not safe enough for these license applications then why would they be secure enough for

⁵⁹ Texas House Elections Committee Hearing. Apr. 27, 2015. Web. 08 Dec. 2016.

voter registration. Even though these new license applications require in person interactions for a photo etc. to be take, and the DPS already accepts some voter registration applications online for address updates, Representative Schofield's question nonetheless demonstrated his and other committee members already cemented position on OVR.⁶⁰

Discussion: Could the National Voter Registration Trend Sway Texas

Finally, the momentum that OVR has gained in the past several years across the country is positive for future OVR legislation in Texas. While Arizona first implemented OVR fifteen years ago, it was another six years before any other state implemented an online system. However, the number of states passing and implementing OVR has accelerate dramatically since then. Even since the last time the Texas Legislature discussed OVR in 2015, the number of states currently offering OVR has increased from 23 to 34. This growing momentum offers serious benefits to OVR's future in Texas, which can be demonstrated in the marked benefits it provided for OVR in Tennessee.

While the Tennessee legislature has several key similarities to the Texas Legislature, such as a strong Republican majority, strict voter ID laws, and concerns over potential voter fraud, the state legislature behaved markedly differently in the last session than Texas did in its own previous session in 2015. Part of this difference could be explained by the growing popularity of online voter registration among states. When Tennessee discussed SB 1626, it was a full year after the bill had last been discussed during the 2015 legislative session in Texas. Within that year, an additional nine states had either passed legislation or implemented OVR. During the discussion of SB 1626, Tennessee legislators mentioned multiple times that 29 states

⁶⁰ Texas House Elections Committee Hearing. Apr. 27, 2015. Web. 08 Dec. 2016.

already had OVR in place - which had been successful and without incidence of voter fraud. This created a sense of inevitability for passing and implementing OVR, as it emphasized how many states were adopting an online system. It also mitigated the sense that this was a risky endeavor, as so many states had also chosen to adopt an online system and there had not been notable problems for these states. In that these indicators of safety and inevitability were reliant on such a considerable number of states already having OVR, and this number growing so much between when Texas and Tennessee discussed OVR in their legislatures, this could be a positive indicator for Texas passing an OVR bill soon. This increase in other states passing and implementing OVR could serve as a motivator as well as a reassurance for Texas to implement an online system.

Chapter 3: “motor voter” Compliance in Texas

Until now, I have discussed using legislation to create an online system for voter registration in Texas. However, there is an alternative legal path for implementing online voter registration: increasing Texas’ compliance with the “motor voter” portion of the National Voter Registration Act (NVRA). This requires giving individuals who submit identification renewals through the Department of Public Safety (DPS) website to the opportunity to simultaneously register to vote through the website. Currently, Texas only offers voter registration for first time registrants in a county if they submit paperwork to the DPS office in person. Individuals who are already registered in a county can update their registration through the DPS’s website. However, individuals who are first time registrants in a county cannot register through the DPS website, and instead are offered a form to print and mail to register to vote.

To comply with the NVRA, Texas should offer first time registrants an online method to register through the DPS. This is the subject of a 2016 court case, *Stringer v. Cascos*, brought against Texas. These changes would be consistent with court decisions in other states regarding the scope and applicability of the NVRA. While another standalone online voter registration system outside of the DPS website, which could be created through legislation, would still be necessary and provide access for more people, the accessibility and efficiency of voter registration would be greatly improved if online registration was provided through the DPS.

Section 5 of the 1993 National Voter Registration Act (NVRA) establishes the “motor voter” requirement and is explained by the Department of Justice as the following:

Each State motor vehicle driver’s license application (including any renewal application) submitted to a State motor vehicle authority must serve as a simultaneous voter registration application unless the applicant fails to sign the voter registration

application. This application for voter registration must be considered as updating any previous voter registration by the applicant.

In addition, any change of address form submitted for State driver's license purposes must also serve as notification of change of address for voter registration purposes unless the registrant states on the form that the change of address is not for voter registration purposes. This means that all changes of address submitted to State motor vehicle offices must be forwarded to election authorities unless the registrant affirmatively requests otherwise by opting out on the form.⁶¹

Currently, the Texas DPS does not accept voter registration applications online if an individual is a first-time registrant in the county. While ID renewals or updates (such as updating an individual's address) may be completed online, and individual may not simultaneously apply for voter registration online if it is their first time registering in the county. If they are changing their address to one within the same county, where they were already registered to vote, then the information submitted to the DPS may be used to update their voter registration.

Texas Court Case

In 2016, *Stringer v. Cascos* was filed by the Texas Civil Rights Project and Waters & Kraus, LLP challenging the status quo in Texas by arguing that the Texas DPS is required, according to the NVRA, to provide registration to all individuals who are submitting identification updates on their website, even if they are first time registrants in a county. The case claims that the "motor voter" requirement of the 1993 National Voter Registration Act (NVRA), which mandates that the DPS offer voter registration when individuals apply for or renew their

⁶¹ "The National Voter Registration Act Of 1993 (NVRA)." The United States Department of Justice. U.S. Department of Justice, 1 Sept. 2016. Web. 26 Mar. 2017.

driver's license, should also apply to applications that are submitted online to the DPS. They claim that this is already required by the language in Section 5 of the NVRA and that current practices in Texas violate the equal protection clause of the 14th Amendment by treating online users differently from those that visit the DPS in person.⁶²

After the implementation of the NVRA, Texas law was updated “so that when a voter submits a change of address, that ‘serves as a change of address for voter registration’ as well, unless the individual indicates otherwise,” at the DPS. For instance, when an individual who is eligible to vote visits the DPS in person and indicates on their ID application that they would like to register to vote, their name, address, and additional information are forwarded by the DPS to the Secretary of State's office for voter registration. While an individual submits the same information to the DPS via the online ID and license process, this information cannot be forwarded to the Secretary of State for voter registration. While the DPS does not use information submitted online for new voter registrations, they often use that same information to cancel the registration of individuals who have moved out of a county. This demonstrates that the DPS has the capability to forward information submitted online to the Secretary of State for updating voter registration information.⁶³

Stringer v. Cascos claims that individuals submitting identification updates online to the DPS should be able to simultaneously submit voter registration applications, as the NVRA's “motor voter” requirements applies to online interactions. This is supported by highlighting that the “motor voter” requirements state that they apply to “each” ID application and “any” change of address application that goes through the DPS. This would suggest that when an individual

⁶² Jarod Stringer, Et. Al, v Carlos H. Cascos and Steven C. McCraw. U. S. Western District of Texas San Antonio Division. 14 Mar. 2016.

⁶³ Jarod Stringer, Et. Al, v Carlos H. Cascos and Steven C. McCraw. U. S. Western District of Texas San Antonio Division. 14 Mar. 2016.

submits one of these applications online, which is permitted in Texas, these same requirements should apply. The NVRA notably does not discriminate between the method in which these applications are submitted to the DPS, either in person or online. The NVRA also requires that the application to register to vote occur “simultaneously” with the driver’s license application through the DPS. However, in the current system the requirement to print out a voter registration application and mail the form requires a process that is separate from the information being submitted online and is thus not a “simultaneous” process.

This separate process for voter registration has led to confusion for many Texans who mistakenly believed they had registered to vote when they submitted an application on the DPS’ website. From 2013 to 2016, Texas received 1,800 complaints from individuals who had mistakenly believed they had registered to vote on the DPS’ website. The current system is not only inadequate for fulfilling the intended purpose of the NVRA, but it is also erroneously leading many people to incorrectly believe their registration has been updated when it has not.⁶⁴

Stringer v. Cascos also claims that the Equal Protection Clause of the 14th Amendment is being violated because the DPS and Texas are treating individuals differently based solely on whether they visit the DPS in person or via their website. The case claims that this falls under the 14th Amendment as it is applicable to any situation where a “state subjects voters to disparate treatment or places arbitrary restrictions upon the right to vote.” This claim is supported by citing that any burden placed on certain voters that is not placed on others, “must be justified by relevant and legitimate state interests ‘sufficiently weighty to justify the limitation,’ based on *Crawford v. Marion County Election Board*, which goes on to say that there is no, “litmus test

⁶⁴ Jarod Stringer, Et. Al, v Carlos H. Cascos and Steven C. McCraw. U. S. Western District of Texas San Antonio Division. 14 Mar. 2016.

for measuring the severity of a burden that a state law imposes on a political party, an individual voter, or a discrete class of voters,” but that they must be evaluated based on this state interest.⁶⁵

If *Stringer v. Cascos* were to be successful, it would create a non-legislative pathway for online voter registration to be implemented, at least through the DPS website. This pathway would allow an online option to be implemented for individuals to newly register to vote in a county when they update their license or ID through the DPS website, an option that does not currently exist.

Motor Voter in Georgia

Similar court cases in other states have clarified how the NVRA’s “motor voter” provision should be implemented. In 2011, Georgia was accused of violating Section 7 of the NVRA, which requires states to provide voter registration to individuals who submit paperwork to public assistance offices. Georgia was accused of not providing voter registration to individuals who did not submit this paperwork in person. The case, *Georgia NAACP v. Kemp*, brought forth allegations that state agencies were inconsistently providing voter registration forms to individuals who visited these offices in person, and that Georgia did not have any system for providing voter registration services to individuals who interacted with these government offices over the phone, via the mail, and over the internet.⁶⁶

In 2012, U.S. District Court Judge Charles A. Pannell found that the NVRA requirements in Section 7 applied to all transactions with public assistance offices, not just those that occurred in person, and that Georgia was violating the NVRA by limiting voter registration assistance to

⁶⁵ Crawford v. Marion County Election Board. Supreme Court of the United States. Oct. 2007.

⁶⁶ Georgia State Conference of the NAACP v Brian Kemp and Clyde Reese. United States District Court For the Northern District Of Georgia. 6 June 2011.

individuals who visited these offices in person. This interpretation was reached by looking at Section 7 requirements in the NVRA, beginning with the “plain language”, but also accounting for their, “context and with a view to their place in the overall statutory scheme.” In doing so, the court found that the text of Section 7, which says states must “distribute with *each* application for such service or assistance, and with *each* recertification, renewal, or change address form” a mail voter registration application form, is not limited to individuals who submit these forms in person. The court also determined that the NVRA’s requirement that, “all *offices* in the state that provide public assistance” did not on imply an office’s physical location. Instead, the court found that this did not expressly limit the requirement to in person visits. The broad use of “all”, coupled with the intention of the NVRA to increase access to voter registration, meant the text could be taken to include remote applications to these offices (such as online applications).⁶⁷

Georgia agreed to a settlement in the case, which included a requirement that public assistance offices provide voter registration opportunities to individuals who interacted with the offices online.⁶⁸ Although this case is not completely analogous to the current case in Texas, as it refers to public assistance agencies under Section 7 and did not result in a completely online registration option (as applications still had to be printed and mailed), it does provide very relevant clarification for language within the NVRA and its applicability to online interactions with state agencies. The case pending in Texas similarly addresses whether all applications submitted to the DPS, regardless of whether they are in person, should be required to comply with the NVRA. The clarifications in *Georgia NAACP v. Kemp* help to inform this debate, and

⁶⁷ Georgia State Conference of the NAACP v. Brian Kemp and Clyde Reese. United States District Court for the Northern District of Georgia Atlanta Division. 30 January 2012. <https://lawyerscommittee.org/wp-content/uploads/2015/06/Pannell-Order-1-30-12.pdf>

⁶⁸ "Georgia NAACP v. Kemp." Lawyers' Committee for Civil Rights Under Law. N.p., 24 June 2015. Web. 27 Mar. 2017.

contributed to informing decisions in Alabama and North Carolina that addressed the “motor voter” requirements of Section 5 and whether they applied to online applications.

Court Case in Alabama

In 2015, the Department of Justice (DOJ) accused Alabama of violating the “motor voter” provision of the NVRA. The DOJ found that there had been “widespread noncompliance” of the “motor voter” requirement, and that applications for driver’s licenses were not serving as applications for new or updated voter registration. As a result, Alabama and the DOJ came to an agreement to rectify these violations of the NVRA. Alabama agreed to update the voter registration of individuals based on their license or ID applications through the DPS - including applications that were submitted online.⁶⁹ Within their agreement, applications for ID through the DPS were specifically defined to include online applications: “For purposes of this [memorandum of understanding], the terms “application” and “form” include any computerized data intake process or procedure.”⁷⁰

The memorandum between the DOJ and Alabama supports that the NVRA and the “motor voter” requirement should legally be applied to applications that are submitted to the DPS online. The DOJ’s analysis that, to comply with the “motor voter” requirements of the NVRA, Alabama must update voter registration records based on applications submitted online supports claims in *Stringer v. Cascos* that Texas is not in compliance with the NVRA. If the same logic employed by the DOJ in Alabama is applied to Texas, then applications submitted online to the Texas DPS should be used to update voter registration records.

⁶⁹ Kent Faulk. "Alabama Agrees with DOJ to Comply with “motor voter” Law." AL.com. Alabama Media Group, 13 Nov. 2015. Web. 27 Mar. 2017.

⁷⁰ DOJ and Alabama Memorandum of Understanding. Retrieved from <https://www.scribd.com/document/289584507/DOJ-and-Alabama-Memorandum-of-Understanding>

Motor Voter in North Carolina

In late 2015, in *Action NC et al. v. Strach (North Carolina)*, several organizations accused North Carolina of failing to comply with the NVRA by not updating voter registration records when individuals updated or renewed their ID through the mail or online. While the case was pending, the federal district court issued a memorandum opinion that required North Carolina to accept ballots from individuals who had visited the DMV in person not had their registration updated. While the court expressed some skepticism that “motor voter” requirements applied to online applications, it also stated that North Carolina had failed to support its claim that the allegation the NVRA applied to online applications “lack[ed] statutory support.”⁷¹

In evaluating North Carolina’s claim that the NVRA’s requirement for “all offices” providing public assistance to provide voter registration services only applied to the physical locations of offices, the court looked closely at the NVRA’s text and precedent from previous court cases. The court explained that previous cases had interpreted “offices” broadly to mean “a subdivision of a government department or institution,” and that the NVRA states it applies to “all offices” which implies it was intended to mean an expansive application. The opinion also relied on clarification from the DOJ that stated that Section 5 of the NVRA, which includes the “motor voter” requirements, should not be interpreted as limited to in person applications.⁷²

While not going so far as to provide relief under a preliminary injunction, the court did state in its opinion that, “Plaintiffs are likely to succeed on the merits of their claim that the NVRA applies to remote covered transactions.” The opinion again addressed the NVRA’s use of

⁷¹ Action NC Et. Al. v Kim Westbrook Strach Et.al., United States District Court for the Middle District of North Carolina. 27 Oct. 2016.

⁷² Action NC Et. Al. v Kim Westbrook Strach Et.al., United States District Court for the Middle District of North Carolina. 27 Oct. 2016.

“each” and “any” ID application also serving as information for voter registration by stating they are, “unambiguous, and reflect Congress’ intent to make the Act applicable to “each” and “any” covered transaction, irrespective of whether the transaction occurs remotely or in-person.”⁷³

Motor Voter Limitations

Although a very monumental improvement and step in the right direction, online voter registration faces several limitations if only implemented in DPS applications, which would be the result if the claim in *Stringer v. Cascos* is successful. While this would mean that all ID applications submitted online to the DPS could also update be used to update voter registration, this would still not include an online voter registration option for individuals who are not updating their information through the DPS, or who do not already have a Texas ID.

The first limitation, that this online system would only apply to individuals who were using the DPS website, limits the impact of OVR because there is not a separate method for an individual to only update their voter registration information. While “motor voter” laws are very effective in reaching individuals who are already updating their information through the DPS and making voter registration conveniently available at the same time, it does not provide a practical avenue for individuals who need to update their voter registration without applying for a new or updated ID. While an individual could choose to update their ID for the explicit purpose of updating their voter registration, this requires several more steps and notably several forms of ID (like a driver’s license) are accompanied with a monetary fee. This limitation could be rectified by complementing voter registration through the DPS website with another online avenue for registration, such as a method proposed by the Texas legislation that has been filed in the past. In

⁷³ Action NC Et. Al. v Kim Westbrook Strach Et.al., United States District Court for the Middle District of North Carolina. 27 Oct. 2016.

Alabama, the Secretary of State did this by launching a website for OVR in 2016 separate from the DPS registration.

Second, this system of online voter registration through the DPS requires that an individual already have a form of ID from the state of Texas. To renew an ID online through the DPS, an individual must already have had that ID from the state. Further, individuals can't apply for new forms of ID online, and must instead do so in person at the DPS office. This requirement creates serious obstacles for individuals who do not already have an ID. These requirements and obstacles are similarly in place within the OVR proposals that have been filed in legislation in Texas, as the OVR systems proposed would also require that individuals already have a signature on file with the DPS (implying that they already have some form of ID). Thus, this limitation is not unique to an online voter registration system linked to DPS ID applications online, but it is still important to note that this updated system would still leave much work to be done in making voter registration accessible to more voters online.

Conclusion

Given the national, and accelerating, trend towards adopting online voter registration, it seems inevitable that Texas will eventually follow suit. Even during the year of writing this thesis, the number of states with OVR increased from 30 to 38. This increase in momentum suggests that online registration will soon become a standard part of voter registration, just as technology has become a standard part of many other aspects of our lives.

The question becomes not *if*, but *when* will Texas offer online voter registration. My analysis argues that, if court decisions are consistent with previous decisions about the National Voter Registration Act, a court decision could soon mandate OVR through the DPS. Legislation in the Texas Legislature can also gain more political momentum in the future to make it out of a committee hearing, and benefit from broader support among the entire legislative body. However, this legislative outcome would likely to take several more legislative sessions to result in OVR passage. With the Texas legislature meeting for only 140 days every two years, this could take substantially more time than a court decision.

If, and when, Texas implements OVR in the future, it will be a critical step towards increasing the convenience and efficiency of voting in the state. OVR reduces the monetary costs, increases the security, and improves the accuracy of voter registration. Texans' information will be more secure and accurate when they register. New voters, and especially young voters, will be more likely to register and vote because of increased convenience and feasibility of registration.

In the end, although Texas may be on the slower end of the transition to OVR, the national trend will eventually push the state towards online registration. While the political climate of Texas may continue to create differences in other election policies, such as controversial issues like voter ID, it appears that online voter registration will be a bipartisan and successful policy from which Texas voters will benefit

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